REMARKS

Support for this Amendment may be found *inter alia* in Applicant's drawings, claims and specification; accordingly, no new matter has been introduced. In the April 02, 2002 Office Action, the Examiner has rejected claims **1-21**. After entry of the preceding amendments, claims **1-21** remain pending in the application upon granting of an allowable Petition to Revive under 37 CFR 1.137(b). Consideration and allowance of all pending claims **1-21** is earnestly requested.

As a preliminary matter, the undersigned thanks the Office for the courtesy of the informal telephone conference wherein Applicant requested status information concerning the record of prosecution of the instant Application.

Applicant respectfully requests that the objections to the drawings be held in abeyance until allowable subject matter may be identified.

OBJECTION TO CLAIMS

Appropriate correction of the appearance of the term "aid" has been addressed in the amendment of claim **20**.

CLAIM REJECTIONS UNDER 35 U.S.C. §103(a)

Claims **1-21** have been rejected under 35 U.S.C. §103(a) as being purportedly unpatentable over Wong *et al.* (US Patent No. 5,890,175) in view of Bezos *et al.* (US Patent No. 6,029,141). The Examiner suggests that Wong substantially teaches an electronic commerce system having a host in communication with a plurality of distributors. The Examiner further suggests that Wong discloses the host having the ability to sort items from the distributors and a store builder maintaining a consumer accessible website separate from the store while maintaining an electronic link to the store. The Examiner further proposes that Wong substantially teaches the steps of having a store owner electronically accessing a host, selecting a store type, setting up an account, and customizing the appearance and product mix commensurate in scope with that of a specialty store. The Examiner also suggests that Bezos teaches the use of a commission schedule with stores providing a consumer with access to items. The Examiner then suggests that it would have been obvious to have used the commission and access feature via a distributor, as purportedly taught in Bezos, in conjunction with the system and method of Wong. The Examiner further suggests that it would have been obvious *inter alia* to customize the appearance, utility and product mix of the store.

Notwithstanding the preceding, Applicants herein respectfully traverse the rejections of claim **1-21**. In order to establish a prima facie case of obviousness under §103, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest **all of the claim limitations**. (see MPEP §2143; emphasis added).

With respect to the first requirement, as it may relate *inter alia* to the rejection of independent claims **1** and **15**, the pending Action fails to provide a reasoned basis for the suggestion or motivation to modify or combine the disclosure of Wong ('175) with that of Bezos ('141) and/or any other teaching or reference of

record. To the extent that such a suggestion or motivation has not been identified, under the second requirement, accordingly there can be no reasonable expectation of success. Any expectation of success under the circumstance could only be unreasonable at best.

Notwithstanding the preceding, even if the Wong disclosure were combined with that of Bezos and/or any other reference, knowledge or teaching of record, such a combination would not lead a person skilled in the art to develop Applicant's invention; namely, a system and method utilizing (among other disclosed and enabled features) a "class designation" for identifying product items available from a plurality of distributors such that "members of a same class are assigned a unique tag". (See claim **1** and claim **15** as amended). Accordingly, Wong taken in combination with the disclosure of Bezos fails to teach each and every limitation of Applicants' invention. Applicant therefore submits that the §103(a) rejection of independent claims **1** and **15** as amended would be improper and respectfully requests that the Examiner withdraw rejection of the same.

Applicant would offer for the Examiner's esteemed consideration that the Office "cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense"; rather, the Office must point to some concrete evidence in the record in support findings of obviousness. See, *In Re* Zurko, 258 F.3d 1379 (2001) where the court found conclusions of obviousness lacking substantial evidentiary support to constitute reversible error on the part of the Office.

Notwithstanding the recitation of novel elements in each of claims **2-14** and **16-21**, inasmuch as these claims variously depend from and incorporate all of the limitations of their corresponding independent claims **1** and **15** as amended, dependent claims **2-14** and **16-21** are similarly allowable over the art of record. Applicants therefore respectfully request that the Examiner withdraw §103(a) rejection of the same.

CONCLUSION

Claims **1-21** are pending in the instant application upon granting of an allowable Petition to Revive under 37 CFR 1.137(b). Consideration of the previously pending claims and allowance of all claims **1-21** is earnestly requested.

No amendment made herein was related to the statutory requirements of patentability unless expressly stated; rather any amendment not so identified may be considered as directed *inter alia* to clarification of the structure and/or function of the invention and Applicant's best mode for practicing the same. Additionally, no amendment made herein was presented for the purpose of narrowing the scope of any claim, unless Applicant has argued that such amendment was made to distinguish over a particular reference or combination of references. Furthermore, no election to pursue a particular line of argument was made herein at the expense of precluding or otherwise impeding Applicant from raising alternative lines of argument later during prosecution and/or Appeal. Applicant's failure to affirmatively raise specific arguments is not intended to be construed as an admission to any particular point raised by the Examiner.

Should the Examiner have any questions regarding this Response and Amendment or feel that a telephone call to the undersigned would be helpful to further advance prosecution of this application, the Examiner is invited to call the undersigned at the number given below.

Respectfully submitted,

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Dated: October 21, 2003

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